

### **REMARKS**

Claims 1-18 are presently pending in the application. Claims 2, 3, and 12 have been amended in this response without narrowing or otherwise changing the scope of these claims. More specifically, claims 3 and 12 have been rewritten in independent form, and claim 2 has been amended to correct the antecedent basis of the claim.

In the Office Action mailed September 20, 2005, claims 1, 2, 6, 7, 10, and 16 were rejected, and claims 3-5, 8, 9, 11-15, 17, and 18 were subject to an objection. More specifically, the status of the claims in light of this Office Action is as follows:

(A) Claims 1 and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,437,285 to Verrier et al. ("Verrier") in view of U.S. Patent No. 5,827,195 to Lander ("Lander");

(B) Claim 6 was rejected under 35 U.S.C. §103(a) as being unpatentable over Verrier and Lander and further in view of U.S. Patent Application Publication No. 2005/0010122 to Nearing et al. ("Nearing");

(C) Claims 7 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Verrier and Lander and further in view of U.S. Patent No. 5,713,367 to Arnold et al. ("Arnold");

(D) Claims 3-5, 8, 9, 11-15, 17, and 18 were subject to an objection as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form; and

(E) Claim 2 was rejected under 35 U.S.C. §112 as lacking sufficient antecedent basis.

The undersigned attorney wishes to thank the Examiner for engaging in a telephone interview on December 15, 2005, and requests that this paper constitute the applicant's Interview Summary. Verrier and claims 1, 3, and 12 were discussed in this telephone interview. In discussing original claim 1, the Examiner provisionally agreed that Verrier fails to disclose or suggest, *inter alia*, determining a T-wave alternan waveform by differencing a plurality of temporally adjacent T-wave segments to obtain

preliminary alternan waveforms. To determine a T-wave alternan "waveform" as set forth in claim 1, the polarity of the alternans is preserved. In contrast to this feature of claim 1, Verrier discloses determining the magnitude of alternans by (a) computing the area between the EGG signal and the isoelectric baseline in the T-wave portion of a number of beats, and (b) calculating the absolute value of the differences in the areas of corresponding time divisions in R-R intervals. (Verrier 15:19-22, 16:62-65.) Verrier does not determine a T-wave alternan "waveform" because the absolute value of the differences merely provides the magnitude of the alternans without preserving the polarity. Verrier accordingly fails to disclose determining a T-wave alternan waveform by differencing a plurality of temporally adjacent T-wave segments to obtain a preliminary alternan waveform in combination with the other features of claim 1. Therefore, the Section 103(a) rejection of claim 1 should be withdrawn.

Although the Examiner provisionally agreed that claim 1 is patentable over the combination of Verrier and Lander during the telephone interview on December 15<sup>th</sup>, the Examiner reserved the right to review Verrier in light of the discussion of claim 1 and to perform a new search. The Examiner also indicated that a Primary Examiner or a Supervisory Examiner will need to approve a Notice of Allowance.

Claims 2, 6, and 7 depend from claim 1, and each of these claims are patentable over the cited references for at least the reasons explained above. Accordingly, the Section 103(a) rejection of claims 2, 6, and 7 should be withdrawn for the reasons discussed above with reference to claim 1 and also in light of the additional features of these claims.

Independent claim 10 has, *inter alia*, features generally analogous to the features of claim 1. Accordingly, the Section 103(a) rejection of claim 10 should be withdrawn for the reasons discussed above with reference to claim 1 and for the additional features of this claim.

Claim 16 depends from claim 10. Accordingly, the Section 103(a) rejection of claim 16 should be withdrawn for at least the reasons discussed above with reference to claim 10 and also in light of the additional features of this claim.

B. Objection to claims 3-5, 8, 9, 11-15, 17, and 18

Claims 3-5, 8, 9, 11-15, 17, and 18 were found to be allowable if rewritten in independent form to include all of the limitations of their respective base claims and any intervening claims. Claims 4-5, 8, 9, 11, 13-15, 17, and 18 have not been rewritten in independent form because provisional agreement was reached to withdraw the rejection of independent claims 1 and 10. Claims 3 and 12 have been rewritten in independent form to include the features of the claims from which they depend. Accordingly, the objection to claims 3-5, 8, 9, 11-15, 17, and 18 should be withdrawn.

C. Section 112 Rejection

Claim 2 was rejected under 35 U.S.C. § 112 as lacking sufficient antecedent basis. Claim 2 has been amended to correct the antecedent basis without narrowing or otherwise changing the scope of this claim.

D. Conclusion

In view of the foregoing, the pending claims comply with 35 U.S.C. § 112 and are patentable over the applied art. The applicant respectfully requests reconsideration of the application and a mailing of a Notice of Allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned representative at (206) 359-3258.

Respectfully submitted,

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